

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9144 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RASIKBHAI MAGANBHAI

Versus

BHARAT VIJAY MILLS LTD,

Appearance:

1. Special Civil Application No. 9144 of 1993
MR KS ACHARYA with MR HK ACHARYA for Petitioners
MR KS NANAVATI for Respondent
-

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 24/01/2003

ORAL JUDGEMENT

By filing instant petition under Article 227 of
the Constitution, the petitioners have challenged

legality of order and judgment dated June 15, 1992, rendered by the Industrial Court, Gujarat, in Appeal (IC) No.105/91 and Appeal (IC) No.1/92, by which claim of the petitioners to direct the respondent to regularise their services is rejected and the Award dated November 30, 1991, passed by the Labour Court, Kalol, in BIR Application No. 69/87 directing the respondent to pay lay off compensation to the petitioners is set aside.

2. The petitioners were engaged by the respondent i.e. Bharat Vijay Mills Ltd. as apprentices and were paid daily wages. It was their claim that in the years 1984, 1985 & 1986 they had continuously worked for more than 240 days. In January, 1987, the respondent closed its Rotary Printing Department, but did not pay lay off compensation to the petitioners. The petitioners were employed as 'Badali Workers' with effect from February 10, 1987. The claim of the petitioners was that they were entitled to receive lay off compensation and that their services should have been regularised. Under the circumstances, the petitioners filed an application under Section 78 read with 79 of the Bombay Industrial Relations Act, 1946, which was numbered as BIR Application No. 69/87, before the Labour Court, Kalol claiming reliefs of regularisation in service and payment of lay off compensation.

3. On notice being served, claim of the petitioners was contested by the respondent by filing a reply. The claim advanced by the respondent in its written statement was that the petitioners had not continuously worked on any particular Machine for a period of more than 240 days and they were not entitled to the reliefs claimed in the application. On appreciation of evidence, Labour Court, Kalol held that the petitioners were not entitled to the relief of regularisation in service, but were entitled to lay off compensation. Under the circumstances, the Labour Court, Kalol by Award dated November 30, 1991 directed the respondent to pay lay off compensation to the petitioners from January, 1987.

4. Feeling aggrieved by the said Award, the petitioners preferred Appeal (IC) No.105/91 before the Industrial Court, Gujarat at Ahmedabad, and claimed that they were entitled to the relief of regularisation in service; whereas the respondent filed Appeal (IC) No.1/92 claiming that the Labour Court, Kalol was not justified in directing it to pay lay off compensation to the petitioners. The Industrial Court by order and judgment dated June 15, 1992 has allowed the Appeal (IC) No.1/92 filed by the respondent and dismissed the Appeal (IC) No.

105/91 filed by the petitioners, which has given rise to present petition.

5. The Court has heard the learned counsel for the parties. In Gujarat Electricity Board v. Balkhan D.Joya, 2000(2) GLR 1522, a learned Single Judge of this Court has considered the question whether an apprentice is a workman under Section 25F of the Industrial Disputes Act. After examining the scheme of the Industrial Disputes Act, 1947 and the Apprentices Act, 1961, it is held that an apprentice is not a workman and he is not entitled to be reinstated in service for violation of Section 25 of the Industrial Disputes Act. Again, in The Factory Manager, CIMMCO Wagon Factory v. Virendra Kumar Sharma & Anr. AIR 2000 SC 2524, the Supreme Court has held that an apprentice cannot be held to be workman for the purposes of the Industrial Disputes Act. In view of the authoritative pronouncement of law by the Supreme Court, the Court is of the opinion that the petitioners are not entitled to lay off compensation as provided in the Industrial Disputes Act, 1947, nor are they entitled to the relief of regularisation in service because the Industrial Court has recorded a finding of fact that the petitioners were employed as 'Badali Workers' in view of a contract/agreement which was entered into between the respondent and the recognised Union of the employees. The view taken by the Industrial Court, Gujarat to the effect that the petitioners are neither entitled to the relief of regularisation in service nor to the relief of lay off compensation, cannot be regarded as erroneous or illegal so as to warrant interference of this Court in present petition, which is filed under Article 227 of the Constitution. The petition is, therefore, liable to be dismissed.

For the foregoing reasons, the petition fails and it is dismissed. Rule is discharged. There shall be no order as to costs.

(J.M.Panchal, J.)

(patel)